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October 19, 1999

Ms. Magalie Roman Salas
Secretary, Office of the Secretary
Federal Communications Commission
The Portals, TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Comments of Teligent, Inc. on Bell Atlantic's Section 271 Application
CC Docket No. 99-295

Dear Ms. Salas:

Enclosed please find the original, six copies, and an electronic, read-only version of the comments of Teligent, Inc. in the above-referenced proceeding. Twelve copies are also being submitted to Janice Myles, Policy and Planning Division, Common Carrier Bureau. At the same time, paper copies are being submitted to the Department of Justice, the New York Public Service Commission, and ITS, as indicated on the attached certificate of service.

Please do not hesitate to telephone me at 202/429-4758 if you have any questions regarding this submission. Thank you.

Sincerely,

David M. Don

Enclosures

cc: Attached service list

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic – New York),	)	
Bell Atlantic Communications, Inc.,	)	CC Docket No. 99-295
NYNEX Long Distance, and Bell Atlantic	)	
Global Networks, Inc., for Provision of In-	)	
Region, InterLATA Services in New York	)	

COMMENTS OF TELIGENT, INC.

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TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic – New York),	)	
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Region, InterLATA Services in New York	)	

COMMENTS OF TELIGENT, INC.

Teligent, Inc. ("Teligent") hereby submits its comments in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Teligent is a full-service, integrated communications company offering high-quality local, long distance, high-speed data, and dedicated Internet services to small and medium-sized business customers. By integrating advanced point-to-multipoint and point-to-point microwave radio equipment with traditional broadband wireline technology, Teligent's networks offer customers the advantages of lower costs and greater flexibility. Teligent holds Digital Electronic Message ("DEMS") licenses granted by the FCC in 74 major metropolitan areas throughout the United States and currently provides the full range of its services in 34 of these markets.

Teligent launched its commercial service in New York on October 27, 1998. Since that time, Teligent has competed with Bell Atlantic – New York ("Bell Atlantic") in New York City

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[1] Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance, and Bell Atlantic Global Networks, Inc., for Provision of In-Region, InterLATA Services in New York, CC Docket No. 99-295 (filed Sept. 29, 1999) (Application).

for, among other things, the provision of telephone exchange service and exchange access service.

Bell Atlantic deserves recognition for certain efforts it has made in attempting to advance the goals of local competition to date. For instance, Bell Atlantic accommodated Teligent's Manhattan market launch in late 1998 by expediting the construction of Teligent's internal entrance facilities at Teligent's Manhattan central office. Also in 1998, Bell Atlantic expedited the delivery of interconnection trunks, including trunk groups necessary to facilitate Teligent's test schedule.

In addition, Bell Atlantic singularly deserves recognition for its ongoing efforts to address CLEC concerns through regular meetings with the Bell Atlantic User Group ("Group"), a working group that convenes on a semi-monthly basis to address common issues that CLECs face with Bell Atlantic throughout its entire region. Although the effectiveness of these meetings is sometimes questionable since CLECs continue to face many of the issues that have been raised repeatedly by the Group, Bell Atlantic stands alone as the only RBOC that has so far been willing even to participate in such meetings, let alone facilitate the process for seeing that they occur.

Finally, Teligent commends the New York Public Service Commission ("PSC") for its extraordinary efforts in conducting Bell Atlantic's pre-271 filing inquiry and adopting requirements and conditions to foster local competition and facilitate its growth. Nevertheless, the standard for granting a Bell Operating Company's ("BOC's") application to provide in-region interLATA authority is clear – in addition to satisfying the public interest test, among other things, the BOC must demonstrate that it has fully implemented each item on the

competitive checklist.[2] The Commission has concluded that, where a competitor has requested a checklist item, a BOC must "actually furnish[] the item at rates and on terms and conditions that comply with the Act."[3] Failure to provide even one item of the competitive checklist is fatal to a BOC's application. Regrettably, Bell Atlantic's current application does not satisfy these standards. Consequently, the Commission must resist pressures to approve Bell Atlantic's application because it is "almost there." While Teligent praises the progress that Bell Atlantic has made to date and is impressed by the severity of the various anti-backsliding penalties which it faces in certain categories of performance, such penalties concern post-approval behavior. Promised post-approval conduct does not, and legally cannot, cure defects in Bell Atlantic's application.

Based on Teligent's experience with Bell Atlantic, particularly over the last few months, it is clear that Bell Atlantic's application for authority to provide in-region interLATA service in New York ("Application") is premature. As of the date of Bell Atlantic's application, Teligent was suffering from serious Bell Atlantic provisioning deficiencies with respect to interconnection trunks and trunks ordered by Teligent to provide local service directly to its customers. These deficiencies have led to Teligent's direct loss of revenue, goodwill, and most significantly, customers. Through its considerable and repeated efforts to resolve these difficulties directly with Bell Atlantic, Teligent is concerned that Bell Atlantic not only fails to

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[2] 47 U.S.C. § 271(c)(2)(B).

[3] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20601 (¶ 110) (1997) (Ameritech Michigan Order).

live up to certain critical promises of performance, particularly with regard to trunks ordered to provide local service directly to customers, but may well be incapable of doing so at this time.[4]

To date, Teligent has worked vigorously on a cooperative basis with Bell Atlantic (and other ILECs) to try to resolve business issues without resort to regulatory processes available to aid in these efforts. In that regard, Teligent has devoted only limited attention to section 271 proceedings. Bell Atlantic's performance before and through the filing of the Application has constrained the pace at which Teligent can expand and offer local services in competition with Bell Atlantic in New York, a key Teligent market, and this raises serious section 271 issues.[5] Teligent estimates that Bell Atlantic's performance problems, particularly with respect to the trunks it orders to provide local service directly to its end user customers, have caused Teligent to lose customers and revenues amounting to more than one million dollars. While these revenue losses affect Teligent, the loss of customers willing to migrate service from Bell Atlantic to Teligent affects the competitive market, generally.

II. BELL ATLANTIC HAS FAILED TO MEET ITS BURDEN OF PROVING THAT, BASED ON THE FACTS AS THEY EXISTED ON SEPTEMBER 29, 1999, ITS APPLICATION SHOULD BE APPROVED.

Given the enormous importance to telecommunications competition of the statutory prerequisites for the relief Bell Atlantic seeks in the Application, it is not surprising that Bell Atlantic also bears a significant evidentiary and persuasive burden. As the Commission has

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[4] Should Bell Atlantic make a concerted effort backed by more than mere idle promises to improve upon Teligent's provisioning intervals and processes as well as demonstrate its ability through actual improved delivery, Teligent would be the first to make this fact publicly known.

[5] For example, the Department of Justice has stated that, for section 271 approval, a BOC must demonstrate that the local market has been fully and irreversibly opened to competition so that local entry will be constrained only by technological limits and the inherent capabilities and resources of the potential competitors, and not by artificial barriers. Department of Justice Comments at 41-42 in Application of SBC Communications Inc. et al.

stated, an applicant under section 271 of the Communications Act of 1934, as amended ("Act"),[6] retains at all times the ultimate burden of proving that it satisfies all of the requirements for authorization to provide in-region interLATA services.[7] This includes, among other things, compliance with the competitive checklist[8] and a demonstration that granting the application is in the public interest.[9]

The Commission has also concluded that "a BOC's promises of future performance to address particular concerns raised by commenters have no probative value in demonstrating its present compliance with the requirements of section 271," and that "[p]aper promises do not, and cannot, satisfy a BOC's burden of proof."[10] Thus, Bell Atlantic must demonstrate that at the time it filed its application, it was complying with the competitive checklist and that granting its application would be in the public interest. As Teligent demonstrates below, Bell Atlantic has not complied with checklist item (i), is unlikely to comply in the immediate future with checklist item (ii), and granting the Application, based on facts as they exist today, would not be in the public interest.

A. Bell Atlantic fails to provide interconnection as required by checklist item (i).

Section 271 requires Bell Atlantic to demonstrate that it is providing interconnection consistent with sections 251(c)(2) and 252(d)(1).[11] Section 251(c)(2) in turn requires Bell Atlantic to provide CLECs nondiscriminatory interconnection with Bell Atlantic's network at any

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Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121.

[6] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 et seq.).

[7] Ameritech Michigan Order, 12 FCC Rcd. at 20568 (¶ 44).

[8] 47 U.S.C. § 271(d)(3)(A).

[9] 47 U.S.C. § 271(d)(3)(C).

[10] Ameritech Michigan Order, 12 FCC Rcd. at 20573 (¶ 55) (emphasis in original).

technically feasible point "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[12] Such interconnection must also be at least equal in quality to that which the BOC provides itself.[13]

The Commission has explained that in order to meet Section 271's checklist item for interconnection, "incumbent LECs must provide interconnection to a competitor in a manner that is no less efficient than the way in which the incumbent LEC provides the comparable function to itself."[14] Moreover, the "incumbent LEC must design its 'interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within [its] . . . own network[].'"[15] Bell Atlantic's provisioning of interconnection appears to Teligent to fall short of this checklist item. Bell Atlantic has failed to timely provision trunks for the delivery of Teligent-originated traffic to Bell Atlantic. In so doing, Bell Atlantic is not providing nondiscriminatory interconnection.

Based on Teligent's experiences with Bell Atlantic, the Commission should conclude that Bell Atlantic currently fails to meet checklist item (i).[16] Teligent submits that a BOC failure to meet a request for interconnection (checklist item (i)) by any "competing provider[] of telephone exchange service"[17] in New York requires the Commission to reject that BOC's application. Checklist item (i) requires that the BOC provide "[i]nterconnection in accordance with the

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[11] 47 U.S.C. § 271(c)(2)(B)(i).

[12] 47 U.S.C. § 251(c)(2).

[13] Id.; see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, 15614-15 (¶¶ 224-25) (1996) (Local Competition Order).

[14] Application of BellSouth Corp. for Provision of In-region, InterLATA Services in Louisiana, 13 FCC Rcd. 20599, 20642 (¶ 64) (1998) (Second Bell South Louisiana Order).

[15] Ameritech Michigan Order, 12 FCC Rcd. at 20662, (¶ 223) (1997) (citation omitted).

[16] 47 U.S.C. § 271(c)(2)(B)(i).

[17] 47 U.S.C. § 271(c)(1)(A). As discussed, supra, Teligent is a competing provider of telephone exchange service.

requirements of sections 251(c)(2) and 252(d)(1)."[18] Section 251(c)(2)(D) requires interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[19] Providing interconnection to one requesting carrier, but not another, is clearly discriminatory.

As a facilities-based CLEC that does not require collocation, Teligent relies on incumbent LECs far less than most other CLECs. Nevertheless, Teligent is dependent on Bell Atlantic for the essential bottleneck facilities interconnecting the two networks.[20] In Teligent's dealings with Bell Atlantic, however, it has been the victim of shortcomings in Bell Atlantic's process of provisioning interconnection facilities, the critical component to Teligent's customers' ability to originate traffic to and receive traffic from non-Teligent end users. Teligent is concerned that these difficulties will only be exacerbated if Bell Atlantic faces significantly heightened internal provisioning burdens if, through Commission approval, it is granted authority to enter the interLATA market prior to a time when these provisioning deficiencies are corrected.

For Teligent to be able to offer service to its customers, it is critically reliant on circuits carrying Bell Atlantic-originated traffic to Teligent, and Teligent-originated traffic to Bell Atlantic. Teligent orders such facilities in bulk from Bell Atlantic. Because these facilities are, in fact, identical to interstate trunking facilities, i.e., entrance facilities, Bell Atlantic requires CLECs to order them through Bell Atlantic's Access Service Request ("ASR") process rather

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[18] 47 U.S.C. § 271(c)(1)(B)(i).

[19] 47 U.S.C. § 251(c)(2)(D).

[20] Teligent currently purchases interconnection with Bell Atlantic pursuant to its interconnection agreement. See Application, App. F, Tab 48 (Bell Atlantic/Teligent Interconnection Agreement). Teligent has elected the physical architecture described in Section 4.2.2.(e) of the Bell Atlantic/Teligent Interconnection Agreement.

than through the Local Service Request ("LSR") system that is used for UNEs and resale.[21] Pursuant to standard industry practice, the requesting carrier (which, prior to the 1996 was typically an IXC) submits an ASR order to be followed within a stated interval by an "accept" or "reject." Rejected ASRs generally go through at least one or more supplements ("supps") which involve the requesting carrier resubmitting the ASR to "correct" the item(s) that resulted in a reject. Once an ASR is "clean," i.e., there no longer exists a basis for rejection by Bell Atlantic, Bell Atlantic issues a Firm Order Commitment ("FOC") to the requesting carrier acknowledging the order and committing to a delivery date. Again, the issuance of the FOC is to occur within a stated interval. When large orders of interconnection trunks are requested simultaneously, i.e., more than 192 trunks, Bell Atlantic's stated intervals are "negotiated."[22] Once a FOC is actually issued, the requesting carrier can purportedly begin making arrangements for delivery of the facility related to its commitments to its customers. In addition, soon after the FOC date, Bell Atlantic should transmit, upon request, a Design Layout Record ("DLR"), a sort of engineering blueprint relevant to the trunk that will be provisioned, that allows the requesting carrier to engineer its network to accommodate and use the facility. Finally, before a trunk can be used by the requesting carrier to actually provision service to its customer, Bell Atlantic must test the trunk to determine if it is a reliable facility.

As noted above, Bell Atlantic must affirmatively demonstrate that it is providing interconnection and access to UNEs in accordance with the Act's requirements.[23] Moreover, the Commission has previously recognized that "[c]lear and precise performance measurements are

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[21] See, e.g., Application, App. A, Tab 2 ¶ 37.

[22] A "negotiated" interval in Teligent's experience with Bell Atlantic is a misnomer to describe what Bell Atlantic really means to be "no interval."

critical to ensuring that competing carriers are receiving the quality of access to which they are entitled."[24] While Bell Atlantic claims that its performance metrics demonstrate that it is providing these checklist items to CLECs at parity, various CLECs' experiences in New York undermine Bell Atlantic's claims. In addition to anecdotal evidence, in many cases it also appears that Bell Atlantic may have construed its metrics in ways that mask discriminatory behavior and in general prevent reliance on the reported data.[25] This pattern of behavior is consistent with Teligent's experience.

Large orders of interconnection trunks are the sine qua non of competition. Indeed, the larger the orders, particularly from fully facilities-based CLECs, the seemingly greater the likelihood that local competition is flourishing. If, however, Bell Atlantic does not or cannot satisfy these orders from a competing facilities based carrier, Bell Atlantic is helping itself to a competitive advantage and controlling the progress its competitor can make. To the extent that it delays or makes unpredictable the delivery of large orders of interconnection trunks, Bell Atlantic puts its thumb on the scales of competition, constraining the inroads competition can

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[23] See, supra.

[24] Ameritech Michigan Order, 12 FCC Rcd. at 20656 (¶ 209); see also id., 12 FCC Rcd. at 20657 (¶ 212) (identifying specific performance data necessary for future section 271 applications); Second BellSouth Louisiana Order, 14 FCC Rcd at 20650, 20712-13 (¶¶ 77, 185-86) (proffered performance data insufficient to demonstrate parity).

[25] For example, Bell Atlantic's current performance metric for "hot cuts" allows it to classify a missed due date for an order that is supplemented (or "supped") as a "customer not ready" or "canceled" order rather than as a "miss," even though the order was "supped" due to Bell Atlantic's error. See Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271, AT&T Br. at 4-5, 12 (New York PSC Aug. 17, 1999). Similar biases exist with regard to other metrics. See, e.g., id. at 5 (Bell Atlantic's unilateral exclusion of completion notices from metric understates its provisioning interval); Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271, Tr. at 4239-40 (New York PSC Aug. 31, 1999) (Bell Atlantic interprets the FOC timeliness metric as applying only to those orders for which a FOC was sent, concluding that 83 out of 85 were on time, a 98 percent delivery of FOCs; however, this interpretation excludes FOCs that were not delivered at all – 15 percent in AT&T's case); Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271, Covad Br. at 17-18 (New York PSC Aug. 17, 1999) (rather than count a due date as "missed" when Bell Atlantic provides a collocation arrangement that is incomplete or defective, Bell Atlantic counts that interval as "met" if the requesting carrier accepts the space); Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271, ACI Br. at 15 (New York PSC Aug. 17, 1999) (same).

make in the marketplace and, depending on the circumstances, forcing a competitor to jeopardize its reputation with its customers.

To date, Bell Atlantic has failed to provision to Teligent large interconnection trunk orders, a failure that is masked by the statistics Bell Atlantic provides relating to how it handles small orders. Perhaps the best evidence in this regard that long distance entry may be premature is the failure of Bell Atlantic to handle properly, let alone satisfy, Teligent's critically important pending order in 1999 for 690 additional interconnection trunks in New York. Briefly, Teligent's order was first placed almost eight weeks before Bell Atlantic's submission of the instant Application. Now, almost 11 weeks later, Bell Atlantic has yet to supply FOC dates for the requested trunks.[26] Teligent initially placed its order for these interconnection trunks on August 5, 1999 pursuant to forty separate ASRs filed as a "project." Since that date, (at least until yesterday evening when Teligent received an indication that its orders were being processed) Teligent has experienced a Kafka-esque stream of dilatory Bell Atlantic tactics regarding this order that enable Bell Atlantic to make it appear as if the order were placed only a few days before Bell Atlantic filed its application, disguising that it was placed approximately 75 days ago (approximately 51 business days).[27]

What is the factual relevance of this scenario to the Commission's evaluation? Because Teligent's significant interconnection trunking order is required by Bell Atlantic to be filed as a "project" and because "projects" have no stated (or target) intervals for ASR rejections, FOC

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[26] Teligent is pleased to report, however, that it did receive an e-mail confirmation from Bell Atlantic at 8:13 pm on Monday evening, October 18, 1999 -- on the eve of this filing -- that all of its 690 trunks were scheduled for completion by November 2, 1999.

[27] See Tab 1.

dates, or delivery dates, this and similar CLEC experiences are not captured in Bell Atlantic's performance metrics as explained in more detail below.

Bell Atlantic's current performance measures include the length of time between when a CLEC submits an ASR and the issuance of a FOC. Unfortunately, due to a loophole in this performance measurement (the lack of a standard FOC-issuance or facility-delivery interval for orders requesting more than 192 trunks, such as Teligent's), this information is neither captured nor reflected in Bell Atlantic's performance data.[28] The New York Performance Standards and Reports do attempt to measure the timeliness of FOC issuance for large orders by measuring the "amount of time in business days between receipt of a clean ASR (received date restarted for each supp) and distribution of a firm order confirmation."[29] Basing FOC timeliness on the receipt of a "clean" ASR (a largely subjective determination made by Bell Atlantic) allows Bell Atlantic to impose unilaterally delay after delay through requiring "supp" after "supp." Through this process, it can be months before the CLEC actually submits an ASR that Bell Atlantic chooses to consider "clean," triggering the need for issuance of a FOC (albeit one not subject to any required delivery interval). In addition, under the terms of the metric, a FOC that has yet to be issued does not figure into the average. Thus, so long as Bell Atlantic never issues a FOC, this delay will never be reported in its performance metrics. An order without a FOC is, of course, an order without a due date. Bell Atlantic's provisioning failure is not reflected in its delivery punctuality metrics, despite the fact, in the case of Teligent's order, that it has been over fifty business days since Teligent requested these facilities.

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[28] See Application, App. A, Tab 3, Att. D (Dowell/Canny Affidavit).

[29] See Application, App. A, Tab 3, Att. B at 15.

The significance of this instance should not be discounted merely because it may appear to involve only one order by one competitive carrier. First, as noted above, the order was for 690 interconnection trunks – an order that has significant effects on Teligent's ability to build out its network. Second, the trials that Teligent has endured to date with regard to this order do not necessarily concern a single experience with Bell Atlantic but a pattern of repeated conduct. Teligent submits that its experience may be evidence of a systemic inability on the part of Bell Atlantic to provision large interconnection trunk orders as evidenced by similar delays Teligent has encountered in other Bell Atlantic region markets. Bell Atlantic's excuse that CLECs "have run out of spare trunk hooks on their switches to install these additional interconnection trunks"[30] is not an excuse that is applicable to Teligent.[31]

While Bell Atlantic claimed at the time of its filing that it "has no backlog of CLEC orders for interconnection trunks because it has the capacity necessary to fill them,"[32] Teligent respectfully disagrees. Given the chronology of Teligent's August 5 order for the 690 interconnection trunks, Bell Atlantic's statement must depend on manipulation of what it considers to be an "order" for purposes of issuing a FOC and scheduling delivery, as described in the attached declarations. Bell Atlantic's statement perhaps hints at what may be the true story – Bell Atlantic may be able to say it has no backlog of CLEC orders for interconnection trunks because it only acknowledges the existence of orders when it has the capacity to fill them.

Even if Bell Atlantic's performance figures are to be believed, they do not necessarily paint a rosy picture with regard to large interconnection trunk orders (for more than 192 trunks).

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[30] See Application, App. A., Tab 1 at ¶ 25 (Lacouture/Troy Affidavit).

[31] Tabs 1 and 2.

[32] Lacouture/Troy Affidavit at ¶16.

The only hint at Bell Atlantic's provisioning time for large interconnection trunk orders, in particular, comes from the "average interval offered" on its Performance Standards and Reports.[33] Bell Atlantic reports data for only June, July, and August of 1999. Over those three months, Bell Atlantic's offered provisioning periods on thirty orders, periods averaging 23.6 business days.[34] Over that same period of time, Bell Atlantic made CLECs eleven offers on large interconnection trunk orders for an average interval of 37.5 days, 59 percent longer than Bell Atlantic offered to IXCs.[35] In August, the most recent month on which Bell Atlantic reports, Bell Atlantic's average offered interval to CLECs was 98 percent longer than that offered to IXCs.[36] And, those CLECs were fortunate. Teligent, for example, placed its 690-circuit interconnection trunk order on August 5 and, assuming Bell Atlantic delivers based on the November 2, 1999 completed delivery date Teligent received on October 18, 1999, Teligent's interval would be approximately 37 days. It does not take a statistician to conclude that this is not parity.

B. Bell Atlantic does not meet competitive checklist item (ii) with regard to Enhanced Extended Loops ("EELs").

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[33] See Dowell/Canny Affidavit at Att. D. Although Bell Atlantic does report an overall "average interval completed," it is calculated on a per-order basis and, thus, is not weighted by the significance of particular orders. This measurement also requires Bell Atlantic to have completed delivery for an order to be counted in the metric. See Dowell/Canny Affidavit.

[34] Dowell/Canny Affidavit at Att. D.

[35] Id.

[36] Id.

Over eighteen months ago, Bell Atlantic committed to providing to CLECs Enhanced Extended Loops ("EELs") as an unbundled network element.[37] For the last six months, the provision of EELs has been required by the New York PSC.[38] Soon, this Commission will also require the provision of EELs on a national basis subject to potential limitations still to be determined. An EEL is a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport.[39] In Teligent's experience, as discussed in more detail below, Bell Atlantic has failed in its fundamental obligation to provide the facilities necessary for EELs. As a result, Bell Atlantic's Application fails to satisfy the requirements of section 271(c)(2)(B)(ii), which, by requiring compliance with section 251(c)(3), mandates that the carrier provide unbundled, nondiscriminatory access to its network and the recombination of such elements.[40]

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[37] Petition of New York Telephone Co. for Approval of its SGAT, Case No. 97-C-0271, Pre-filing Statement of Bell Atlantic-New York at 8-10 (New York PSC April 6, 1998).

[38] See Proceeding on Motion of Commission to Examine Methods by Which CLECs Can Obtain and Combine UNEs, Case No. 98-C-0690, Order Denying Rehearing and Clarifying Primarily Local Traffic Standard at 2 (New York PSC Aug. 10, 1999) ("On March 24, 1999, the Commission issued an order . . . requiring connection of EELs containing loops at and above the DS1 level to a CLEC switch handling local exchange traffic and transmission of primarily local traffic by such EELs. No use restrictions were imposed on EELs containing loops below the DS1 level.").

[39] See id. at 2 n.1. The EEL allows new entrants to serve customers without having to interconnect through collocation in every central office in the incumbent's territory. See id. at 8.

[40] 47 U.S.C. § 271(c)(2)(B)(ii); see AT&T v. Iowa Utils. Bd., 119 S. Ct. 721, 736-38 (1999) (reinstating Rule 51.315(b) of the Commission's rules, which prohibits an ILEC from separating already-combined elements. 47 C.F.R. § 51.315(b)).

Section 51.315(b) of the Commission's rules has been reinstated since January, although the issue of which network elements the Commission requires the ILECs to unbundle, including certain UNE combinations, such as the EEL, was not settled until recently. Nonetheless, Bell Atlantic committed to the Chief of the Common Carrier Bureau in February that it would continue to provide the seven UNEs identified by (vacated) Section 51.319, pending the outcome of the Commission's UNE Remand Order. Letter from E.D. Young III, Bell Atlantic, to L. Strickling, Chief, FCC Common Carrier Bureau, of February 8, 1999, at 1. Thus, Bell Atlantic has had an ongoing obligation to provide existing combinations of UNEs in accordance with the law and its public commitments.

Teligent believes that the UNE combination identified as an EEL is nothing more than the very same dedicated T1 facility that Teligent has been purchasing from Bell Atlantic's special access tariff for some time. More importantly, Teligent has been using these T1 facilities for the identical purpose that UNE-based CLECs use EELs, i.e., to connect directly the CLEC's local customer locations to the CLEC's switch or POP for local service provision. Teligent uses these facilities to connect its network at its switch to its local customer locations that cannot yet be reached through Teligent's wireless facilities due to, among other things, line-of-sight limitations; lack of installed microwave equipment; or because these buildings currently lie outside of Teligent's FCC-licensed service areas. While Teligent does not rely on such facilities for the provision of local service to all of its customers, the lack of these facilities constitutes a bottleneck in the provision of local service to customers at certain locations. Although Teligent currently orders these facilities from Bell Atlantic's access tariff through the Bell Atlantic ASR process (the same process through which it must order its interconnection trunks), Teligent has faced for the past ten months recurring provisioning problems with these facilities. These provisioning issues have, unfortunately, already given Teligent first-hand experience with Bell Atlantic's inability to provision EELs through the delays inherent in the provisioning of their equivalents.

Teligent has substantial recurring and ongoing needs for these facilities to connect the portion of its local customer base not served by wireless facilities to its network. Teligent's buildout plans in this regard require Bell Atlantic to provision several EELs or T1 EEL-equivalents (depending on how they are ordered) for these purposes per business day in New York. After prolonged negotiations with Bell Atlantic earlier this year during the New York PSC's 271 inquiry process, Teligent, after months of frustration and delay in obtaining timely

delivery of these facilities from Bell Atlantic and after experiencing customer loss and ill will as a result thereof, obtained a senior-level commitment from Bell Atlantic concerning this matter. This commitment, made by Bell Atlantic's Group President -- Network Services, Paul Lacouture (a declarant in this proceeding),[41] was to deliver a mere four of these T1 trunks per business day in New York, a relatively low number compared to the number of similar trunks Bell Atlantic provisions for IXC customers daily.

At present, more than five months later, Bell Atlantic has yet to live up to this commitment and Teligent estimates that it has orders for approximately 80 of these facilities pending for New York at this time, with well over half of these, in Teligent's view, past due. Equally important, Teligent has doubts as to whether Bell Atlantic is capable of fulfilling this or similar commitments at this time.[42] Specifically, on a typical day, Bell Atlantic will schedule delivery of four or five T1s to Teligent. On a day on which four T1s are scheduled to be delivered, on average, two will actually be delivered. Taking into account known third-party problems, cancellations, and possible instances of delay due to Teligent-related issues (which sometimes relate directly to inflexible and unhelpful Bell Atlantic processes), Teligent estimates that roughly one quarter of scheduled deliveries are not made due to Bell Atlantic fault. This, while significant itself, does not convey the full effect on Teligent. Through these failed deliveries, Bell Atlantic has developed a rapidly increasing delivery backlog of Teligent-ordered facilities that it is unable to reduce because it is unwilling to increase the total number of deliveries per day. In other words, because rescheduled backlog deliveries are included in per-

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[41] See Application, App. A, Tab 1.

[42] Should Bell Atlantic begin to honor its long-standing commitment and actually deliver at least four trunks a day, this will go a long way to alleviating Teligent's doubts.

day scheduled deliveries, Teligent is never able to obtain the number of trunks at the locations requested in its expected timeframe. Not only has Bell Atlantic failed to make progress on this backlog, it has only been during the pendency of this proceeding, i.e., since September 29, 1999, that it has demonstrated a serious willingness to attempt to resolve this issue, once again.

To further exacerbate the impact on Teligent's ability to provision local service to its customers pursuant to these facilities, few of the EEL-equivalents that Bell Atlantic delivers actually are usable on their delivery date, as they should be. Instead, in the vast majority of instances, upon delivery Bell Atlantic only partially tests or completely fails to test circuits that it delivers to Teligent. This requires Teligent to schedule further appointments with Bell Atlantic (that may or may not be made) to complete testing of the circuit, i.e., complete delivery of the facility, before Teligent can use the circuit. Bell Atlantic's performance metrics do not make clear whether it considers an order "complete" if it has delivered the circuit yet failed to completely test the delivered circuit.[43] If Bell Atlantic does not factor into its results whether such testing was performed, then all of its evidence considering timely provisioning of trunks (and, potentially, other checklist items, as well) is cast in considerable doubt. An order cannot be deemed to be "complete" if the product delivered is not usable. That an order is for a usable trunk should go without saying.

In the uncommon instances in which the EEL-equivalent T1 facility has both been delivered on time and has been tested fully, Bell Atlantic often fails to provide Teligent, despite Teligent's requests, with an item crucial to Teligent's use of the facility – the Design Layout Record (DLR). A DLR specifies the physical placement of facilities within Bell Atlantic's

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[43] See e.g., Dowell/Canny Affidavit at ¶ 58 and Application, App. A, Tab 3, Att. B at 34.

network, allowing Teligent to complete the engineering of its facilities that will be attached to the Bell Atlantic EEL-equivalent. For a significant period of time after delivery, interconnection trunks provided without DLRs are useless to Teligent. Only through gratuitous efforts of its own has Teligent been able to work around some of these situations. Such efforts involve Teligent personnel, through their own guesswork, attempting to navigate the maze of Bell Atlantic's network to recreate the information that would otherwise be provided on the DLR.

These provisioning delays cause significant internal resource problems for Teligent due to the need for its employees to follow-up with Bell Atlantic on provisioning issues, often dealing with ever-changing (and frequently inaccurate) problem escalation procedures. This is in addition to the resources that must be devoted to working around the frequent absence of DLRs.

Provisioning delays and circuit failure delays can preclude Teligent's ability to sell service to certain customers or provision service to already-acquired customers, causing losses in revenue and goodwill. This loss of revenue (and the accompanying economic losses attributable to resolving these issues) affects Teligent's bottom line. Such failures also add substantial uncertainty to Teligent's buildout plans.

Of course, because Teligent currently does not order these EEL equivalents through the LSR UNE ordering process, Bell Atlantic's failures with respect to these facilities used directly for the provision of local service competition are not reported in its performance metrics. These facility orders, which Teligent currently places through Bell Atlantic's ASR process, place no greater incremental burden on Bell Atlantic than interconnection trunk orders placed through the same process or UNE EEL orders placed through the LSR process. The mechanism by which Teligent provisions local service to certain customers is irrelevant -- there is no reason to believe that Bell Atlantic could provision these facilities in a timely manner no matter what they are

called, no matter which system is used to order them. This is especially true in light of Teligent's understanding that the KPMG Test Plan used to test Bell Atlantic's ability to handle complex and voluminous orders did not evaluate Bell Atlantic's ability to provision EELs. As Teligent has noted before, if Bell Atlantic is permitted to enter the interLATA market resulting in an even greater demand for its facilities and resources, Teligent is concerned that its continuing provisioning problems will only be exacerbated. In addition, the deterrence value of Bell Atlantic's performance penalties has yet to be demonstrated. As Teligent explains above, Bell Atlantic is quite adept at finding methods by which it can meet its performance metrics but fail with regard to actual performance.

While Bell Atlantic has, indeed, improved its provisioning performance to some degree, "improvement" does not equate to compliance. As the Commission found with respect to a similar issue in the Ameritech Michigan Order, "in order to satisfy its checklist obligation, [a BOC] must demonstrate at the time its application is filed that it is providing interconnection equivalent to the interconnection it provides itself, not merely that its interconnection performance data have improved."[44]

III. GRANTING BELL ATLANTIC'S APPLICATION WOULD NOT BE IN THE PUBLIC INTEREST AT THIS TIME.

Bell Atlantic's current failings with respect to the provision of interconnection trunks and EEL-equivalents on a timely basis constitutes a barrier to entry that impedes the growth of competition. Instead of a competing carrier's ability to sell service in the marketplace determining its position in the competitive race, Bell Atlantic's actions to date both delay and constrain the growth of its competitors. Because Teligent usually does not order EEL-

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[44] Ameritech Michigan Order, 12 FCC Rcd. at 20673 (¶ 244).

equivalents until it has a customer in a building it is seeking to connect to its network, Bell Atlantic's failures and delays in this area have caused Teligent to lose customers and revenue. This barrier to entry must be considered in determining whether it would be in the public interest for Bell Atlantic to be allowed to offer interLATA service in New York.

Teligent is concerned that Bell Atlantic's entry into long distance in New York may exacerbate any current provisioning difficulties. Not only would Bell Atlantic have new internal needs that would conflict with existing external needs, but its incentive to comply with current obligations and resolve current difficulties may also be diminished. Unless and until Bell Atlantic is able to demonstrate that it is able to meet the facilities requirements of Teligent and other competitors in a timely manner, the Commission should conclude that the public interest would not be served by granting the Application. Only when Bell Atlantic begins to maintain a consistent schedule of reliable and timely delivery of trunks, including interconnection trunks and EEL or EEL-equivalent facilities, will Teligent be convinced that Bell Atlantic has the capability to meet Teligent' growing needs. When this occurs, Teligent will be the first to publicly acknowledge this fact.

In addition to any consideration the Commission may give to the EEL-equivalents that Teligent purchases as a competitive checklist item, Bell Atlantic's current failure to provision such facilities in a timely manner not only is probative with regard to Bell Atlantic's future ability to meet checklist item (ii), but also constitutes an important barrier to entry that should be considered in the Commission's public interest analysis. Because Bell Atlantic uses these facilities to compete with Bell Atlantic for the provision of local telephone service, as discussed above, these are bottleneck facilities that are essential to Teligent's ability to provide local service to certain customers and grow its business. Bell Atlantic's inaction with respect to these

facilities warrants a Commission determination that the Application is not in the public interest. Accordingly, the Application must be denied pursuant to the terms of section 271(d)(3)(C). In the Ameritech Michigan Order, the Commission made clear that ILEC conduct that was discriminatory or anticompetitive would undermine a determination that the local market is and will remain open to competition.[45] As noted above, it has been Teligent's experience that these necessary functionalities for local competition have not been adequately provided pursuant to Teligent's request. Ultimately, until Bell Atlantic can demonstrate that these functionalities are available on a timely and irreversible fashion, it should not be permitted to enter the long distance market.

IV. BELL ATLANTIC'S PROMISES OF FUTURE PERFORMANCE, EVEN IF RELEVANT, SHOULD BE SKEPTICALLY VIEWED.

As discussed above, promises of future performance are irrelevant to Bell Atlantic's application, particularly those made after September 29, 1999, the date that the Application was filed. Nevertheless, to the extent that the Commission is considering relying on such promises, it should take into account Teligent's experience with Bell Atlantic's promises. Teligent is concerned whether Bell Atlantic will honor commitments it makes at this time, particularly in light of Teligent's experience with Bell Atlantic during the New York 271 pre-filing process. Specifically, Teligent's decision not to participate fully in the New York 271 process resulted solely and directly from the high-level assurances it obtained from Bell Atlantic at that time that Teligent's issues, i.e., the issues it continues to have today, would be fixed.

The following provides a brief chronology of some of what has transpired between the companies since March of this year. On March 4, 1999, just over five months after Teligent's

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[45] Ameritech Michigan Order.

October 27, 1998 commercial launch in New York City, Teligent identified provisioning delays such as those addressed in these comments in a letter filed with the New York PSC in its 271 proceeding.[46] Shortly thereafter, Teligent participated in informal meetings with PSC Staff to stress the importance of these issues to the Company.

In April, after receiving Teligent's New York PSC filing and learning of Teligent's meeting with the PSC staff, Bell Atlantic contacted Teligent suggesting a high-level meeting between the companies for the purpose of rectifying the problems that Teligent had identified in its filing. On April 22, 1999, approximately one week before comments and affidavits were due on Bell Atlantic's New York Checklist Update were due at the New York PSC, Teligent representatives met with Bell Atlantic as requested. At the meeting, Teligent representatives presented a detailed explanation of the problems the Company faced, as well as expected performance levels for Bell Atlantic to achieve. Teligent obtained from Bell Atlantic, including Bell Atlantic's declarant Paul Lacouture, verbal assurances that Teligent's problems would be addressed. On the same date, Teligent regulatory attorneys met informally with Department of Justice representatives to explain the problems Teligent had encountered with Bell Atlantic and to highlight the critical nature of those problems in its ability to compete in New York.

On April 27, 1999, Teligent presented to Bell Atlantic a letter memorializing the April 22 meeting and Teligent's understanding of the commitments Bell Atlantic had made therein particularly with respect to the delivery of four T1s per market per day.[47] In reliance on the promises of improved performance made by Bell Atlantic at the April 22nd meeting, and because Teligent's principal focus has always been to solve business issues, rather than raise

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[46] Tab 2, Attachment 1.

regulatory issues or concern itself with long distance entry so long as the BOC does not obstruct Teligent's business, Teligent did not file formal comments in the New York PSC proceeding. Bell Atlantic's as yet unmet high-level commitment to Teligent just before a key date in the New York PSC's 271 proceeding demonstrates clearly that the FCC should rely only on performance as of the date of the Application and not mere promises of future performance.

V. CONCLUSION

Bell Atlantic's current Application should not be granted. Teligent, however, has no desire to prevent Bell Atlantic from gaining long distance entry once Bell Atlantic meets Teligent's legitimate yet limited needs, consistent with the Telecommunications Act of 1996. Equally important is Bell Atlantic's demonstration that those needs can and will continue to be satisfied after long distance entry. These needs must be met for Teligent to compete effectively and grow its competitive business in the New York marketplace. Teligent will always stand ready to reevaluate and revise its position based on Bell Atlantic's performance on Bell Atlantic's long distance entry.

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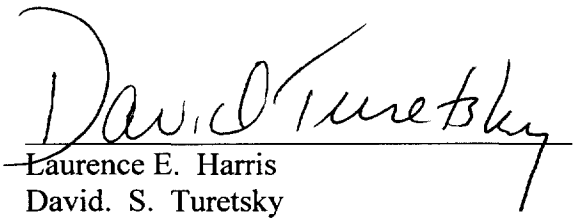
[47] Tab 2, Attachment 2.

Respectfully submitted,

TELIGENT, INC.

By: 

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